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November 10, 2014

Mr. Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Re: Request of Review for Case No. 05-RC-
137335 and Motion to Consolidate with 05-
RC-134217

Dear Mr. Shinnars:

Please find enclosed the Request for Review submitted on behalf of the Petitioner in the above-captioned matter.

Very truly yours,



Brian Connolly

cc: James Foster
Dean Kpere-Daibo

NATIONAL LABOR RELATIONS BOARD

Case No. 05-RC-137335

In the Matter of:

VEOLIA TRANSPORTATION,

Employer,

and

LOCAL 689, AMALGAMATED TRANSIT
UNION

Petitioner (Union).

Re: Street Supervisors Petition
for Representation

PETITIONER UNION
REQUEST FOR REVIEW
AND MOTION TO CONSOLIDATE

Petitioner Local 689, Amalgamated Transit Union hereby request a review of the decision issued in the above captioned case, Case Number 05-RC-137335, and for purposes of review, consolidation with pending case number 05-RC-134217. On September 19, 2014 in case number 05-RC-134217, Diamond Transportation Services and Amalgamated Transit Union, Local 689, the Regional Director ruled that the WMATA Metro Access Road Supervisors were not supervisors within the meaning of Section 2(11) of the Act. Rather they were to be considered members of the petitioned-for unit and a secret ballot election was directed. The matter in this case 05-RC-137335 is virtually identical Street Supervisors for WMATA Metro Access perform

the same duties under the WMATA/Veolia as they do for Diamond Transportation. However, the Regional Director ruled that the Veolia Street Supervisors *were* to be considered Supervisors under the Act. Therefore, pursuant National Labor Relations Board's Rules and Regulations Section 102.67(c)(1), Local 689 is requesting review. Since there is no distinction between the duties of a Road Supervisor who works for Diamond and a Road Supervisor who works for Veolia, Local 689 moves to consolidate these two matters. Counsel for Diamond Transportation has also requested review as the situation is identical. (See attached letter)

In case number 05-RC-134217, the Board determined that Road Supervisors at Diamond did not have the power to issue discipline under the meaning of Section 2(11) of the Act. The decision says,

"I also find that a road supervisor's warnings do not lay the foundation for future, or additional discipline; the Employer has not provided examples of an employee who received a written warning, suspension, or termination which cite a prior oral warning as the reason for the increased level of discipline. The Board has recognized that the authority to issue minor corrective actions, such as verbal and written warnings, is too minor a disciplinary function to confer supervisory status when there is no evidence that the warnings form the basis for further disciplinary or otherwise affect job status. *Ohio Masonic Home, Inc.*, 295 NLRB 390, 393-394 (1989); *Passavant Health Center*, 284 NLRB 887, 889 (1987), cited in *Mountaineer Park, Inc.*, 343 NLRB 1473, 1477 (2004)." (P. 33-34)

However, in the matter at hand the Regional director states,

"It is clear from the record that road supervisors and lead road supervisors have the authority to orally counsel operators, orally warn operators, issue written warnings to operators, and remove operators from service, at least temporarily until further information can be obtained...These circumstances are in marked contrast to those in *Diamond Transportation*." (P. 15)

In fact, all road supervisors who work for WMATA through their respective contractors do the same job. . A road supervisor, no matter which contractor they are employed by, is to be the eyes and ears for WMATA. Their main purpose is to observe what is happening in the field and report what they observe. Only a truly egregious violation may cause them to pull someone from service. Even then, actual discipline is administered later, by others. During the hearing, Brian Jackson stated that when road supervisors are in the field they are keeping an eye on matters,

“Well, we are given the commission to go out and monitor the street and particularly looking and observing the behaviors, the patterns, the policies being followed by operators in particular. We don’t check anybody else but operators. So we – some of us are assigned to go to certain facilities, hospitals, or some mental group home type of spots, whatever, where there’s high traffic, we note those are high traffic areas, and we’ll post up there for in excess of an hour or two depending on how long it might be, and we’ll observe. We don’t get a chance to touch everybody because it’s a fast pace thing going on, but we do observe things going on, and in those instances, if there’s any time that we see something going on that might not follow, you know, protocol, then we are advised to make sure that we go and talk to them and address them one way or another.” (TR 75)

When dealing with accidents, the road supervisors do not discipline employees. Rather they observe, report, and make an initial determination whether an accident was preventable.. Mr Jackson testified at the hearing:

Mr. Taylor: So you’ve investigated an accident. You’ve determined it’s preventable. You turned that in, and somebody decides they agree with you and something should be done with the employee. All right. Now, at that point, what form do you fill out that instructs the employee that they’ve been disciplined, that they’ve got a suspension?

Mr. Jackson: I don’t fill out any forms for discipline.

Mr. Taylor: If an employee is suspended, does someone else take care of that?

Mr. Jackson: Yes, mainly the operations manager.

(TR 165)

Even the removal of an employee from service for a "door-to-door" violation is nothing more than standard procedure. Mr. Holtz testified:

Mr. Connolly: Okay you discussed earlier that a door-to-door violation is very serious. How do you— as a road supervisor, you observe a door-to-door violation. How do you go about removing the employee from service?

Mr. Holtz: First of all, I've got to make sure that door-to-door violation is committed, okay, that that driver actually committed a door-to-door violation, and there are certain things that as road supervisors, we have to look for when a door-to-door violation is committed. A door-to-door violation commitment could be a driver not getting out of their seat and escorting the client from the door to the vehicle. A door-to-door violation could be a driver going to a facility where there's only one door entrance to the building, and the driver goes to that entrance of that door inside the facility to retrieve a client. They're just certain things we look for, and once that violation is committed, again the protocol is to call Hyattsville and let them know that I've taken a driver out of service.

Mr. Connolly: Okay

Hearing Officer Usher: This door-to-door policy, whose policy? Is this WMATA or Veolia?

Mr. Holtz: WMATA's, yes, sir. Strictly WMATA's.

(TR 213)

Veolia and Diamond Transportation are private companies that have contracts with the Washington Metropolitan Area Transit Authority to provide paratransit services. In each case, the

bargaining unit is confined to WMATA operations. The vans these companies operate are depicted as "MetroAccess" vehicles and have no markings to distinguish one subcontractor from the next. (Tr. 161) At the hearing, Mr. Holtz testified that prior to working for Veolia he had been a road supervisor for predecessor MV Transportation under their MetroAccess contract. (TR 204) Mr. Holtz testified that the checklist presented at the hearing, exhibit 9, was basically the same one he had used when at MV. (TR 207) Exhibit 13, the accident kit, was also very similar to the one used by MV and he was trained to use it by WMATA. (TR 213) The decision also referenced their prior employment by a different contractor saying,

"Furthermore, while Jackson and Holtz testified as to their knowledge of a range of policies and procedures handed down by WMATA and Veolia, Holtz clearly stated that he had not been given copies of these rules in his capacity as a road supervisor. Much of Holtz's and Jackson's knowledge of the rules and policies seems to originate in the training they received, and the experience they accumulated, at their previous employer, MV." (P. 17)

The decision also acknowledged that the training is provided for by WMATA so the Road Supervisors are familiar with WMATA standards. The decision states,

"Road and lead supervisors also undergo considerable training regarding the policies and procedures they are expected to enforce on behalf of WMATA and Veolia....road and lead supervisors attend monthly meetings organized by WMATA, at which WMATA reviews policy and procedure." (P. 22)

The road supervisors, regardless of which contractor they are employed by, perform the duties established by WMATA. Road supervisor rules and regulations are written by WMATA and all road supervisors are perform the same job. In the case of First Transit, a third Metro Acces Contractor, Road Supervisors were included in the certified bargaining unit and are now

represented by the ATU. (See aattached certification) Since the Board has already ruled that Diamond Transportation Road Supervisors are not considered supervisors under the Act and an election should be held, it stands to reason that all road supervisors for WMATA Metro Access be viewed the same way. There is no difference in their duties and it is illogical not to give all road supervisors the same bargaining rights. The Board should reverse its decision and allow the Road Supervisors to hold an election just as their peers at Diamond can pursuant to case number 05-RC-134217. Furthermore, the Board should consolidate these two cases as they present the same issue.


Respectfully submitted,

/s/ Brian Connolly
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Certificate of Service

I hereby certify that a copy of the foregoing Post Hearing Brief on behalf of the Union was emailed to Jim Foster, Esq. this 16th day of October 2014, to foster@mcmahonberger.com


Brian Connolly

JEFFREY J. PARGAMENT
jpargament@pandhlaw.com
Admitted in DC, MD and PA

October 31, 2014

VIA ELECTRONIC FILING

Mr. Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

Re: *Diamond Transportation Services, Inc.*
Case No. 05-RC-134217

Dear Mr. Shinnars:

In accordance with *Reliant Energy*, 339 NLRB 66 (2003), Diamond Transportation Services, Inc., directs the Board's attention to Regional Director Posner's October 27, 2014 decision (Case 05-RC-137335) finding that road supervisors employed by Veolia Transportation Services, Inc., were "supervisors." Veolia, like Diamond, provides paratransit services to WMATA, and its road supervisors perform duties that are identical in all material respects to those at issue here.

Regional Director Posner correctly found that Veolia's road supervisors possessed the authority to take disciplinary action. As in Diamond's case, the road supervisors monitored the performance of drivers, issued infractions for "door to door service" violations, and investigated accidents. They issued accident reports, incident reports, and road observation reports, removed drivers from service, and recommended retraining.

Diamond's road supervisors performed precisely the same duties and possessed and exercised precisely the same disciplinary authority. As discussed in Diamond's Request for Review, its road supervisors removed drivers from service (Req. for Rev. at 26); recommended retraining (*Id.* at 18; E. Ex. 12(m)); and issued warnings in lieu of taking formal disciplinary action (*Id.* at 12-13).

In distinguishing this case, Regional Director Posner noted that Veolia, whose drivers are covered by a CBA, has a progressive disciplinary policy in its CBA, and write-ups issued by Veolia's road supervisors were placed in personnel files. Here, while Diamond did not present evidence as to personnel files, its management relied exclusively on the write-ups in taking progressive



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disciplinary action. (*Id.* at 24-25) Further, while there is no CBA in Diamond, the Company clearly followed a progressive disciplinary policy both generally and with regard to specific infractions. (*Id.* 24-25)

In sum, any distinctions to be drawn between Diamond and Veolia are distinctions without a difference. Indeed, we understand the Petitioner in Veolia acknowledged that Diamond and Veolia road supervisors have the same duties and responsibilities. Accordingly, Diamond submits that the Regional Director's October 27, 2014 decision further supports Diamond's Request for Review of the September 19, 2014 decision.

Very truly yours,

A handwritten signature in cursive script that reads "Jeffrey J. Pargament". The signature is written in dark ink and is positioned above the printed name.

Jeffrey J. Pargament

cc: Diamond Transportation Services, Inc.
Doug Taylor, Esq.



P x 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

First Transit, Inc. Employer and Amalgamated Transit Union, Local 689 Petitioner	Case 05-RC-112000
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TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

Amalgamated Transit Union, Local 689

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

Unit: All full-time and regular part time Drivers, Road Supervisors, Dispatchers, Maintenance Technicians, Maintenance Workers, Utility Clerks, Utility Workers, Mechanics, and Mechanics Tech II, and Gatekeepers employed at the Employer's Capitol Heights, Maryland facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.



February 10, 2014

/s/ Steven L. Shuster

STEVEN L. SHUSTER

Acting Regional Director, Region 5
National Labor Relations Board